

PEDRO ROQUE, COMPLAINANT, VS. JOSE C. HILARIO (DEPUTY CLERK OF BR. IV, CITY COURT OF PASAY CITY), RESPONDENT.

A.M. No. P-1839. April 27, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Complainant, Pedro Roque, has charged respondent Deputy Clerk of Court, Jose C. Hilario, of the City Court of Pasay, Branch IV, with "gross misconduct and acts prejudicial to the public service."

The verified Complaint alleges that respondent caused to be assigned to Branch IV of the City Court of Pasay City, Civil Case No. 12510, entitled "Domingo Estanislao vs. Pedro Roque", because he (respondent) knew the plaintiff in that case personally; that respondent immediately caused the issuance of summons and had it served by a policeman of Pasay instead of by the Court process server; that on July 1, 1977, respondent had the case submitted for decision because complainant and his counsel came a bit late for trial; that on August 26, 1977, respondent again secured an Order considering the case submitted for decision due to the absence of complainant's counsel who came late, although complainant's son, Bernardo, was present in Court; that respondent sent the notice for the hearings on January 4 and 5, 1978 to the former address of complainant's counsel despite the fact that the latter had already filed his notice of change of address as early as July 1, 1977; that as a consequence, they were not able to appear for the hearing on January 4, 1978 and the Court ordered the striking of the testimony of witness Bernardo Roque; that copy of this Order was again sent to the former address of the plaintiff's counsel; that this was discovered by the latter only when he verified the records so that he had to file a Motion to set aside said Order.

In his Answer, respondent denied that he had caused the assignment of Civil Case No. 12510 to Branch IV stating that cases filed with the City Court of Pasay are raffled by the Executive Judge; that he does not know nor is he related in any way to plaintiff in said case; that summons in the said case was served by a policeman upon request of plaintiff's counsel; that on July 1, 1977, at 10:30 A.M., complainant and his counsel were not in the Courtroom when the case was called so that plaintiff's counsel moved that they be allowed to present evidence ex-parte, which was granted by the Court; that cases were called as they appeared in the calendar; that at the hearing on August 26, 1977, complainant and his counsel were not present despite due notice thereby prompting plaintiff's counsel to move that the case be deemed submitted for decision; that the sending of notices for hearing on January 4 and 5, 1978 to the former address of complainant's counsel was due to an honest mistake; and that the Order considering the case submitted for decision was reconsidered when the Court was apprised of this error and complainant was allowed to continue presenting his evidence.

The Court Administrator, Justice Lorenzo Relova, made the following findings:

"The undersigned cannot believe the charge that respondent Deputy Clerk of Court assigned the civil case in question to Branch IV of the City Court of Pasay City. The matter of raffling cases devolves upon the Executive Judge. It is the standard operating procedure that when a case is filed in court, the same together

with the other cases are raffled to the different branches. And, the fact that the service of summons was done by a policeman and not by a sheriff is of no moment because policemen are often deputized to serve writs and other court processes.

Likewise, it is hard to believe that respondent was instrumental in having the case submitted for decision just because complainant and counsel were late in coming to court. It is of judicial notice that the Clerk in open court and in the presence of the presiding judge call the cases as they appear in calendar. When the plaintiff and counsel are absent, the defendant would ask that the case be dismissed for failure to prosecute; and when it is the defendant who is absent, the plaintiff would move for the reception of his evidence ex-parte. In other words, the court is not duty bound to wait for every litigant to be inside the courtroom before proceeding with the trial. It is the duty of every litigant to be there on or before the appointed time."

and recommended:

"However, considering the admission of respondent that he sent the notice of hearing for January 4 and 5, 1978 at the former address of complainant's counsel and because of which complainant was prejudiced, respondent should be reprimanded. He should be more circumspect in the performance of his duties because incidents like this are one of the reasons for the delay in the early disposition of cases."

We confirm the findings, which are supported by the evidence on record, and approve the recommendation. With a modicum more of effort and with the proper recording, mistakes as to addresses of counsel with all the concomitant delays, can easily be avoided.

WHEREFORE, respondent Jose C. Hilario, Deputy Clerk of Court of the City Court of Pasay, Branch IV, is hereby reprimanded and warned that the commission by him of another act of carelessness will merit a more drastic penalty.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez and Guerrero, JJ, concur.

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